Supreme Court, U.S.
FILED
MAY 3 1988
JOSEPH F. SPANIOL, JR.
CLERK

87-1802
No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CITY OF BISMARCK

Appellee,

v.

JULIE VETTER

Appellant,

ON APPEAL FROM THE SUPREME COURT OF NORTH DAKOTA

JOINT APPENDIX

Dated: March 22, 1988

HUGH P. SEAWORTH
City Attorney
P.O. Box 5503
Bismarck, ND 58502
(701) 222-6570

JULIE VETTER
In Propria Persona
917 Constitution Drive
Bismarck, ND 58501
(701) 258-3987

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DOCKET ENTRIES

5/14/87	JUDGEMENT OF CONVICTION - CITY OF BISMARCK	
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9/11/87	APPELLANT APPENDIX	
10/09/87	APPELLEE BRIEF	
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11/19/87	UNANIMOUS OPINION	LEVINE
12/02/87	PETITION FOR REHEARING	
12/29/87	ACTION BY SUPREME COURT	DENIED
01/05/88	NOTICE OF APPEAL TO U.S. SUPREME COURT	

STATE OF NORTH DAKOTA

County of Burleigh, City of Bismarck

In Municipal Court
Before William Severin, Municipal Judge

THE CITY OF BISMARCK	)	
	)	
v.	)	
	)	
JULIE VETTER	)	**COMPLAINT**
917 Constitution	)	
Bismarck, ND	)	
Defendant	)	

Greg Zenker, being duly sworn, says that on the 19th day of March, A.D. 1987, at the City of Bismarck, in said County, the above named defendant did commit the offense of no dog license in violation of ordinance 3-03-01, within the limits of the said City of Bismarck, as follows, to-wit: That at the said time and place the said defendant did wilfully and unlawfully keep, maintain or have in custody or under control any dog under the age of six months which is not licensed, contrary to the City Ordinances of the said City of Bismarck, in such case made and provided, and against the peace and dignity of the City of Bismarck.

WHEREFORE, Complainant prays that the defendant Julie Vetter may be arrested and dealt with according to law.

_____

Subscribed and sworn to before me this 23rd day of March, 1987.

_____

Municipal Judge

STATE OF NORTH DAKOTA

County of Burleigh, City of Bismarck

In Municipal Court

CITY OF BISMARCK, Plaintiff,	)	
vs.	)	**MOTION TO AMEND COMPLAINT**
JULIE VETTER, Defendant.	)	CR 87-3660

The City of Bismarck moves to amend the complaint against defendant to strike the second "under" in the charging portion of the complaint and insert the word "over" in lieu of. This motion is made pursuant to Rule 3(b) of the North Dakota Rules of Criminal Procedure. No additional offense is being charged.

This amendment clarifies the fact that defendant is charged with having a dog over six months of age without a dog license, not a dog under six months of age.

Attached is a copy of the amended complaint.

Dated this 6th day of April, 1987.

PAUL H. FRAASE
Assistant City Attorney
P.O. Box 5503
Bismarck, ND 58502

CERTIFICATE OF SERVICE

I certify that the above Motion was mailed to Julie Vetter in a stamped envelope on April 6, 1987.

Dated this 6th day of April, 1987.

PAUL H. FRAASE

STATE OF NORTH DAKOTA
County of Burleigh, City of Bismarck
In Municipal Court
City of Bismarck

CITY OF BISMARCK,)
)
vs.) **JUDGMENT OF CONVICTION**
)
JULIE VETTER)

On the 7th day of May, 1987, the above-named defendant came into court, and this being the date set by the court for pronouncing sentence upon conviction of the defendant for the crime of no dog license following his ( ) plea of guilty (or) (X) conviction after plea of not guilty and trial;

And the court having considered all relevant factors prior to imposing sentence and having determined that sentence should be imposed, the defendant having given no justifiable reason for withholding pronouncement of sentence;

NOW, THEREFORE, IT HEREBY IS ADJUDICATED THAT YOU

( ) Serve _____ days in the Burleigh County jail;

(X) Pay a fine in the amount of $25

( ) Pay costs in the amount of $_____

IT IS FURTHER ORDERED, HOWEVER, THAT _____ days of the imprisonment and _____ Dollars of the fine and/or costs be suspended for a term of _____ upon the conditions that you violate no criminal laws during the period of probation and that you and obtain a dog license by 5/11/87 at 5:00 p.m.

BY THE COURT:

Signed: William Severin
Municipal Judge

ENTERED in court minutes
this 7th day of May, 1987.

Clerk of Court

STATE OF NORTH DAKOTA
County of Burleigh

In Burleigh County Court
Case No. 87-2007

CITY OF BISMARCK, Plaintiff,	)	
vs.	)	**MOTION FOR DISMISSAL**
JULIE VETTER, Defendant.	)	

COMES now the defendant, in propria persona, and moves the Court as follows:

Defendant moves this Court to dismiss the complaint on the grounds that Bismarck City Ordinance, Section 6-84 is unconstitutional, and thus is not a public offense.

Dated this 14th day of July, 1987.

JULIE VETTER
917 Constitution Drive
Bismarck, ND 58501

BRIEF IN SUPPORT OF MOTION TO DISMISS

This motion is made pursuant to the N.D.R. Crim. P., Rule 12. Defendant has a right to keep and own a dog and such a right is enumerated in the preamble to the Constitution of the United States, and as such right is enumerated in the preamble to the Constitution of North Dakota.

The government grants a title of nobility when it takes away a right and grants it back as a privilege. Horst v. Moses, 48 Ala. 142 (Ala. 1872).

Bismarck City Ordinance, Section 6-84, takes away the right to own a dog and grants that right back as a privilege subject to one having a dog licensed.

Bismarck, City Ordinance, Section 6-84, grants a title of nobility as it takes away the right to keep, maintain, or have in custody or control a dog and grants that right back as a privilege.

The State is forbidden to grant any title of nobility. United States Constitution, Article I, Section 10, Clause 1. Downes v. Bidwell, 182 U.S. 244, 277 (1901); Gaines v. Buford, (1 Dana) 31 Ky. 481, 500 (Ky. 1833). And what the State can not do directly and can not authorize, it can not do indirectly or authorize through any of its agents such as the City of Bismarck. Downes v. Bidwell, 182 U.S. 244, 291-292, 359-360, 383 (1901); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176-177, (1803). And, an act which the Constitution clearly prohibits is beyond the power of the City, however proper it may be as a police regulation, but for the prohibitory mandate of the Constitution. State v. Giessel, 31 N.W.2d 626, 631 (Wisc. 1948); State v. Cromwell, 9 N.W.2d 914, 918 (N.D. 1943); People v. Wilson, 281 N.E.2d 740, 744 (Ill. A. 1972); Central Markets West Inc. v. State, 180 N.W.2d 880, 882 (Neb. 1970); State v. West Virginia Racing Commission, 55 S.E.2d 263, 270 (W.V. 1949); N.P. Railway Co. v. Warner, 45 N.W.2d 196, 203 (N.D. 1950); State v. Gronna, 59 N.W.2d 514, 532 (N.D. 1953).

Wherefore, Defendant prays this Court to dismiss the complaint and drop all charges as the ordinance is unconstitutional.

Dated this 14th day of July, 1987.

JULIE VETTER
917 Constitution Drive
Bismarck, ND 58501

CERTIFICATE OF SERVICE

I certify that a copy of the above document was mailed to:

Bismarck City Attorney
221 North 5th Street
Bismarck, ND 58501

Dated this 14th day of July, 1987.

_____

JULIE VETTER

STATE OF NORTH DAKOTA
County of Burleigh

In County Court
Case No. 87-2007

CITY OF BISMARCK, Plaintiff,	)	
	)	**BRIEF IN RESISTANCE**
vs.	)	**TO DEFENDANT'S**
	)	**MOTION FOR DISMISSAL**
JULIE VETTER, Defendant.	)	No.

Defendant is charged with the offense of owning or keeping an unlicensed dog within the City of Bismarck, in violation of city ordinance 3-03-01. Defendant seeks dismissal of the complaint on the grounds the ordinance is unconstitutional.

FACTS

The facts are not disputed. Defendant (with her husband) is the owner or keeper of a dog which is more than six months of age. The dog is kept at defendant's home at 917 Constitution in the City of Bismarck. Defendant has not applied for a license for the dog for 1987, nor has a license been issued by the city.

LAW AND ARGUMENT

City ordinance 3-03-01 reads as follows:

> It is unlawful for any person within the city to keep, maintain or have in custody or under control any dog over the age of six months which is not licensed and inoculated against rabies.

The authority of municipalities in the State of North Dakota to license and regulate dogs is found in subsection 22 of N.D.C.C. section 40-05-02, which grants to municipalities the power:

> 22. Dogs. To license dogs and to regulate the keeping of dogs including authorization for their disposition or destruction in order to protect the health, safety and general welfare of the public.

Any question concerning the constitutionality of ordinances providing for the licensing of dogs has long since been resolved, in this state and elsewhere. It is well settled that the legislature, under the police power, may regulate the keeping of dogs. City of Dickinson v. Thress, 290 N.W. 653, 655 (N.D. 1940), citing Sentell v. New Orleans & C.R. Co., 166 U.S. 698, 702, 17 S.Ct. 693, 41 L.Ed. 1169, 1171. That authority may be delegated to political subdivisions. Thress, supra, at 655, citing 2 Am. Jur. p. 719. In Thress, the North Dakota Supreme Court held that a city ordinance requiring the licensing of dogs is a constitutional exercise of the city's powers. Id. at 659.

CONCLUSION

City ordinance 3-03-01, which requires the licensure of all dogs over the age of six months that are kept in the city, is a constitutional exercise of power expressly conferred upon municipalities in the state. A similar ordinance has previously been upheld by the North Dakota Supreme Court.

Respectfully submitted this 15th day of July, 1987.

HUGH P. SEAWORTH
City Attorney
P.O. Box 5503
Bismarck, ND 58502

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing document was mailed, by regular mail, postage prepaid to:

Julie Vetter
917 Constitition Drive
Bismarck, ND 58501

Dated this 15th day of July, 1987.

HUGH P. SEAWORTH

STATE OF NORTH DAKOTA
County of Burleigh

In County Court

CITY OF BISMARCK, Plaintiff,	)	
vs.	)	CASE NO. 87-2007
JULIE VETTER, Defendant.	)	

ORDER DENYING MOTION TO DISMISS

The defendant has requested that the complaint in this matter be dismissed on the grounds that the ordinance under which she is charged is unconstitutional.

The licensing of dogs is a legitimate exercise of police power.

The motion will be DENIED.

Dated this 29th day of July, 1987.

GAIL HAGERTY
Burleigh County Judge

GH:sf

STATE OF NORTH DAKOTA
County of Burleigh

In County Court

CITY OF BISMARCK, Plaintiff,	)	**ORDER AND JUDGMENT**
vs.	)	No. 87-2007
JULIE VETTER, Defendant.	)	

Defendant appealed a conviction entered in municipal court of the City of Bismarck for keeping a dog without a license in violation of city ordinance 3-03-01. Defendant waived a ~~jury~~ trial, and a bench trial was held on July 29, 1987, the Honorable Gail H. Hagerty presiding.

Defendant having filed a Motion to Dismiss, which was resisted by the City, it is hereby

ORDERED that defendant's Motion to Dismiss is DENIED.

It is hereby

ADJUDGED that defendant is guilty of keeping an unlicensed dog in the City of Bismarck in violation of city ordinance 3-03-01.

It is hereby

ORDERED that defendant is sentenced to a fine in the amount of twenty-five dollars payable to the municipal court. Defendant is ordered to obtain a dog license as required and pay the fee therefore, within ten days of the date of this Order. Defendant is also ordered to pay $50.00 court costs, for witness fees, payable to the county court.

Dated this 3rd day of August, 1987.

BY THE COURT:

_____

GAIL H. HAGERTY, JUDGE

Judgment of conviction was duly entered this 3rd day of August, 1987.

Clerk of Court

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

CITY OF BISMARCK, Plaintiff/Appellee,	)	
vs.	)	CASE NO. 870223
JULIE VETTER, Defendant/Appellant.	)	

STIPULATION AND AGREEMENT

Pursuant to Rules 10(g) and 34(f), N.D.R.App.P., the parties agree as follows:

1. In lieu of the record on appeal as defined in subdivision (a) of Rule 10, N.D.R.App.R., the attached "Statement of the Case" is submitted and presented as the record on appeal.

2. This case is submitted for decision on the briefs.

Dated this 25th day of August, 1987.

HUGH P. SEAWORTH
City Attorney
Plaintiff/Appellee
P.O. Box 5503
Bismarck, ND 58502

Dated this 31st day of August, 1987.

JULIE VETTER
Defendant/Appellant
917 Constitution Drive
Bismarck, ND 58501

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

CITY OF BISMARCK, Plaintiff/Appellee,	)	
vs.	)	CASE NO. 870223
JULIE VETTER, Defendant/Appellant.	)	

STATEMENT OF THE CASE

1. City of Bismarck ordinance 3-03-01 states as follows:

> 3-03-01. License Required. It is unlawful for any person within the city to keep, maintain or have in custody or under control any dog over the age of six months which is not licensed.

2. Defendant Julie Vetter is the owner of a dog over the age of six months, which on or about the 19th day of March, 1987, was kept at Vetter's home located in the City of Bismarck.

3. A license has not been issued for the dog in question for the year 1987, and the dog was not licensed as required by city ordinance 3-03-01 on or about March 19, 1987.

4. Following trial by the court in Burleigh County Court on July 29, 1987 (on appeal from a judgement of conviction in municipal court for the City of Bismarck) Vetter was found guilty of keeping an unlicensed dog in the city in violation of city ordinance 3-03-01. Judgment of conviction was entered on August 3, 1987.

5. Vetter subsequently filed a timely notice of appeal.

6. The sole issue raised by Vetter on appeal is stated as follows:

Is City of Bismarck Ordinance 3-03-01 inconsistent with either the Constitution of the United States or the Constitution of North Dakota, and therefore invalid?

Dated this 25th day of August, 1987.

HUGH P. SEAWORTH
City Attorney
Attorney for Plaintiff/Appellee
P.O. Box 5503
Bismarck, ND 58502

Dated this 31st day of August, 1987.

JULIE VETTER
Defendant/Appellant
917 Constitution Drive
Bismarck, ND 58501

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Case No. 870223

CITY OF BISMARCK,
Plaintiff/Appellee

vs.

JULIE VETTER,
Defendant/Appellant

APPEAL FROM THE BURLEIGH
COUNTY COURT STATE OF
NORTH DAKOTA

JULIE VETTER
In propria persona
917 Constitution Drive
Bismarck, North Dakota 58501

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STATEMENT OF JURISDICTION

The appeal to this Court is taken pursuant to Rule 1, N.D.R.App.P.

STATEMENT OF THE ISSUES

Is City of Bismarck Ordinance 3-03-01 a grant of a title of nobility and thus unconstitutional?

STATEMENT OF THE CASE

Appellant, Julie Vetter, was issued a criminal complaint for violation of City Ordinance 3-03-01, which prohibits a person from keeping a dog in the city over six months of age that is not licensed by the city. Appellant plead not guilty to the offense on April 2, 1987, and a trial was set for May 7, 1987. Prior to the trial the Appellant made a motion to dismiss the complaint.

On May 7, 1987 the trial was held and it was then that the Appellant was informed that her motion to dismiss was denied. Appellant received notice through the mail after the trial that her motion to dismiss was denied. Municipal Court ordered a $25.00 fine and licensure of dog.

Vetter made an appeal to the Burleigh County Court on May 11, 1987. The trial was held on July 29, 1987, where Appellant's motion to dismiss was denied and the municipal Court's order was upheld. Appellant was not asked to be present at the time of the Order and Judgement, and a copy of this judgement was not received by the Appellant until September 3, 1987 through the mail. See a copy of the Appellant's Brief in Support of Motion to Dismiss, letter/Order Denying Motion to Dismiss and Judgement of Conviction in the Appendix.

ARGUMENT

Julie Vetter has a naturally existing right to keep and own a

dog and such right is enumerated in the Preamble to the United States Constitution and as such right is enumerated in the Preamble to the North Dakota Constitution.

The Preamble identifies the fact that the People created the government, and that thus the People are sovereign. The government can do only those things which are specifically stated that it can do or which it is not prohibited from doing. The Preamble also identifies the fact that the People retained the right to do all things except those things which the People specifically gave up and granted to the government as is stated in the constitution. The government was created by the People to secure the People's rights, not to grant any 'rights'. North Dakota Constitution, Article I, Section 2; Agner v. Schneider, 253 N.W.2d 184, 187-188 (N.D. 1977); State v. Taylor, 133 N.W. 1046, 1048 (N.D. 1911); Butcher's Union Co. v. Crescent City Co., 111 U.S. 746, 756-757 (1884).

> "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require."
> *N.D. Constitution, Article I, Section 2.*

The State Constitution is simply a recognition of a Republican Form of government. A government is republican if Form of it recognizes that the citizen is sovereign, if it recognizes that all power is in the People, that all law emanates from the People and that all rights inhere in the People. Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 457, 471-472 (1792); Downes v. Bidwell, 182 U.S. 244, 279 (1901); In Re Duncan, 139 U.S. 449, 461-462 (1891); Minor v. Happersett, 88 U.S. (21 Wall.) 162, 166, 175-176 (1874); Luther v. Borden, 48 U.S. (7 How.) 1, 45 (1849); Forsyth v. Hammond, 166 U.S. 506, 519 (1897); Georgia v. Stanton, 73 U.S. (6 Wall.) 50, 75-77 (1867). Also, our Founding Fathers stated:

> "What, then, are the distinctive characters of the republican form? Were an answer to this question

to be sought, not by recurring to principles but in the application of the term by political writers to the constitutions of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised in the most absolute manner by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified, with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has with equal impropriety been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

"If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic . . .

"Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express qauranty of the republican form to each of the latter."
"The Federalist Papers", by Hamilton, Madison, and Jay, Number 39 by Madison.

"Are they not the genuine and characteristic means by which republican government provides for the liberty and happiness of the people?"
"The Federalist Papers", by Hamilton, Madison, and Jay, Number 57 by Madison.

The government grants a title of nobility when it takes away a naturally existing right and grants it back as a privilege. A one word definition for a grant of a title of nobility is a grant of a "privilege," or "monopoly."

"But has the State authority, under the State constitution, to sell to a collection of persons, whether a partnership or a corporation, an exclusive privilege to carry on a lottery? The people generally are prohibited from doing so without the legislative sanction. No public law gives this sanction. Article I, section 32, of the State constitution declares that "no title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State." To confer a title of nobility, is to nominate to an order of persons to whom privileges are granted at the expense of the rest of the people. It is not necessarily hereditary, and the objection to it arises more from the privileges supposed to be attached, than to the otherwise empty title or order. These components are forbidden separately in the terms "privilege",

"honor", and "emolument", as they are collectively in the term "title of nobility". The prohibition is not affected by any consideration paid or rendered for the grant."
Horst v. Moses, 48 Ala. 129, 142 (Ala. 1872).

"An order of men, in several countries, to whom special privileges are granted."
Bouvier's Law Dictionary, the 1873 and the 1914 Editions, on defining "nobility".

"A division of the people, comprehending dukes, marquises, earls, viscounts, and barons. These had anciently duties annexed to their respective honors. They are created either by writ, i.e., by royal summons to attend the house of peers, or by letters patent, i.e., by royal grant of any dignity and degree of peerage: and they enjoy many privileges, exclusive of their senatorial capacity."
Black's Law Dictionary, the 1891 Edition and the 5th Edition copyrighted 1979, on defining "nobility".

Our Founding Fathers, in speaking and advocating for the Constitution, said:

"A fifth class of provisions in favor of the federal authority consists of the following restrictions on the authority of the several States. 1. 'No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal: coin money: emit bills of credit: make anything but gold and silver a legal tender in payment of debts; pass any bill of attainder, ex post facto law, of law impairing the obligation of contracts; or grant any title of nobility.' . . .

"Bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, are contrary to the first principle of the social compact and

to every principle of sound legislation . . . Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; . . . The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community . . . The prohibition with respect to titles of nobility is copied from the Articles of Confederation and needs no comment."
"The Federalist Papers", by Hamilton, Madison, and Jay, Number 44, written by Madison.

Our Founding Fathers, in speaking to the fact that the Constitution contained no bill of rights to protect the people's private rights and liberties, said:

"The most considerable of these remaining objections is that the plan of the convention (the constitution) contains no bills of rights. . . I answer that the Constitution proposed by the convention contains . . . a number of such provisions . . . we find the following: . . . Clause 3—'No bill of attainder or ex post facto law shall be passed.' Clause 7—'No title of nobility shall be granted by the United States.' . . . The establishment of the writ of habeas corpus, the prohibition of ex post facto laws, and of TITLES OF NOBILITY—(capitalized in original book), . . . are perhaps greater securities to liberty and republicanism than any it—(comparing to the

State of New York Constitution) contains.

"Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the cornerstone of republican government; for so long as they are excluded there can never be serious danger that the government will be any other than that of the people.

"It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was the MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by subsequent princes. Such was the Petition of Right assented to by Charles the First in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the prince of Orange in 1688, and afterwards thrown into the form of an act of Parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions, professedly founded upon the power of the people and executed by their immediate representatives and servants. Here, in strictness, the People surrender nothing; and as they retain everything they have no need of particular reservations, 'We, THE PEOPLE of the United States, secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.' Here is a better recognition of popular rights than volumes of those aphorisms which make the principle figure in several of our State bill of rights.

"I go further and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution but would even be dangerous. They would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication—(police power) that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers—(police powers), by the indulgence of an injudicious zeal for bills of rights."

"The Federalist Papers", by Hamilton, Madison, and Jay, Number 84, written by Hamilton. (Comments in parenthesis and underlining this Writer's.)

"The additional securities to republican government, to liberty, and to property, to be derived from the adoption of the plan under consideration —(the Constitution), consist chiefly in the

> restraints . . . in the absolute and universal exclusion of titles of "nobility".
> *"The Federalist Papers", by Hamilton, Madison, and Jay, Number 85, written by Hamilton.*

See also: Societe Vinicole De Champagne v. Mumm C. & Imp. Co., 13 F.Supp. 575, 579 (1935), upheld and reiterated in 143 F.2d 240, 241 (1944).

Bismarck City Ordinance 3-03-01 states: License Required. It is unlawful for any person within the city to keep, maintain or have in custody or under control any dog or cat over the age of six months which is not licensed and inoculated against rabies. This Ordinance takes away the right to own a dog and grants that right back as a privilege subject to one having the dog licensed.

Bismarck City Ordinance 3-03-01 grants a title of nobility as it takes away the right to keep, maintain or have in custody or control a dog and grants that right back as a privilege.

The State of North Dakota is forbidden to grant any title of nobility. United States Constitution, Article I, Section 10, Clause 1; Downes v. Bidwell, 182 U.S. 244, 277 (1901); Gains v. Buford, 31 Ky. (1 Dana) 481, 500 (Ky. 1833); Legal Tender Case, 110 U.S. 421, 447 (1884). The United States Constitution, Article I, Section 10, Clause 1, says:

> "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

And what the State can not do directly and can not authorize, it can not do indirectly or authorize through any of its agents such as the City of Bismarck. Downes v. Bidwell, 182 U.S. 244, 291-292, 359-360, 383 (1901); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176-177, (1803).

And an act which the constitution clearly prohibits is beyond

the power of the City, however proper it may be as a police regulation, but for the prohibitory mandate of the Constitution. State v. Giessel, 31 N.W.2d 626, 631 (Wisc. 1948); State V. Cromwell, 9 N.W.2d 914, 918 (N.D. 1943); State v. Klein, 249 N.W. 118, 125-127 (N.D. 1933); People v. Wilson, 281 N.E.2d 740, 744 (Ill. A. 1972); Central Markets West Inc. v. State, 180 N.W.2d 880, 882 (Neb. 1970); State v. West Virginia Racing Commission, 55 S.E.2d 263, 270 (W.V. 1949); N.P. Railway Co. v. Warner, 45 N.W.2d 196, 203 (N.D. 1950); State v. Gronna, 59 N.W.2d 514, 532 (N.D. 1953).

CONCLUSION

Wherefore, Vetter prays that this appellate Court rule that Bismarck City Ordinance 3-03-01 is unconstitutional as being and depending upon a grant of a title of nobility; and therefore overturn the Judgement of Conviction in the trial court; and remand to the trial court with proper instructions, together with the opinion of this Court.

Dated this 11th day of September, 1987.

JULIE VETTER
917 Constitution Drive
Bismarck, ND 58501

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Case No. 870223

CITY OF BISMARCK,
Plaintiff/Appellee

vs.

JULIE VETTER,
Defendant/Appellant

APPEAL FROM JUDGMENT
OF CONVICTION ENTERED
AUGUST 3, 1987
BURLEIGH COUNTY COURT

BRIEF OF PLAINTIFF/APPELLEE CITY OF BISMARCK

Hugh P. Seaworth
City Attorney
P.O. Box 5503
Bismarck, ND 58502
Attorney for Plaintiff/Appellee

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I.
STATEMENT OF THE ISSUE

Is City of Bismarck Ordinance 3-03-01 inconsistent with either the Constitution of the United States or the Constitution of North Dakota, and therefore invalid?

II.
STATEMENT OF THE CASE

A. Nature of Case and Proceedings Below.

Defendant/Appellant Julie Vetter was charged in Bismarck Municipal Court for failing to obtain a dog license as required by City of Bismarck ordinance 3-03-01. A complaint was signed and filed on March 23, 1987, alleging the offense was committed on March 19, 1987. Prior to trial, the municipal judge denied Vetter's motion to dismiss. Vetter appealed to Burleigh County Court pursuant to N.D. Cent. Code §40-18-19.

Vetter thereafter filed a motion to dismiss in county court. She also filed a document entitled Request Not to be Present At Trial (pursuant to Rule 43, N.D.R.Crim.P.) and she was not present at trial, held on July 29, 1987. Prior to trial, Vetter's motion to dismiss was denied. Vetter was found guilty following trial by the court and a judgment of conviction was entered on August 3, 1987. Vetter subsequently filed a timely notice of appeal.

B. Statement of Facts.

The stipulated facts are set forth in the Statement of the Case. Vetter is the owner of a dog, over the age of six months, which on or about the 19th day of March, 1987, was kept at Vetter's home located in the City of Bismarck. A license has not been issued (by the City of Bismarck) for the dog for the year 1987. The dog was not licensed as required by City of Bismarck ordinance 3-03-01 on or about the 19th day of March, 1987.

III.
ARGUMENT

Vetter has violated City of Bismarck ordinance 3-03-01. She kept a dog, over the age of six months, within the city, but did not obtain a license for the dog as required by ordinance 3-03-01. The only question before the court is this: Is ordinance 3-03-01 a constitutional exercise of power conferred on municipalities by the State of North Dakota?

Vetter argues that she has a "naturally existing" right to keep and own a dog. She claims the City of Bismarck grants a "title of nobility" when it takes away a "naturally existing" right and gives it back as a privilege. Vetter argues that the City of Bismarck (and the State) may not, under the federal and state constitutions, grant a title of nobility. She believes that the City has done just that, by taking away her "naturally existing" right to keep and own a dog, and giving it back as a privilege by permitting one to keep and own a dog only if a license is obtained and the required fee is paid.

To say that Vetter's reasoning is flawed is to understate the case. If one adopts this line of reasoning, then a municipality (or the state) may not require licenses or permits of operators of motor vehicles, hunters or fishermen, contractors, plumbers, lawyers, doctors, or any other professionals or tradesmen. Furthermore, under this line of reasoning, a municipality (or the state) may not license motor vehicles, issue building permits, or require a whole host of other licenses and permits that are basic to the exercise of a variety of traditional governmental regulatory practices.

Vetter's argument is not only illogical, it also lacks foundation in law. Vetter has not cited a single case in any jurisdiction that supports her argument that a municipality may not, when authorized to do so by the state, license and regulate the ownership and keeping of dogs. In fact, any question concerning the constitutionality of ordinances providing for the licensing of dogs has long since been resolved, in this state and elsewhere.

Municipalities, as agencies of the state, have only those powers

expressly conferred upon them by the Legislature or such as may be necessarily implied from the powers expressly granted. Murphy v. City of Bismarck, 69 N.D. 748, 109 N.W.2d 635 (1961); Megarry Bros. v. City of St. Thomas, 66 N.W.2d 704 (N.D. 1954). The power to license and regulate dogs is expressly granted to municipalities by N.D. Cent. Code §40-05-02(22):

> 22. Dogs. To license dogs, and to regulate the keeping of dogs including authorization for their disposition or destruction in order to protect the health, safety, and general welfare of the public.

The City of Bismarck has enacted an ordinance implementing this power as follows:

> 3-03-01. License Required. It is unlawful for any person within the city to keep, maintain or have in custody or under control any dog over the age of six months which is not licensed and inoculated against rabies.[1]

There is no doubt that ordinance 3-03-01 is within the authority conferred by N.D. Cent. Code §40-05-02(22). The constitutionality of similar ordinances or statutes that provide for licensing and regulation of dogs has consistently and universally been upheld.

This court has previously addressed the question of whether municipalities in the State of North Dakota have the authority to license and regulate dogs. City of Dickinson v. Thress, 69 N.D. 748, 290 N.W. 653 (N.D. 1940). In City of Dickinson v. Thress, the court stated that the Legislature, under the police power, may regulate the keeping of dogs and delegate that authority to cities. City of Dickinson v. Thress, at 655 (citing Sentell v. New Orleans & C.R. Co., 166 U.S. 698, 17 S.Ct. 693, 41 L.Ed. 1169 (1897). The court also said that:

---

1. The City, after the date of this offense, amended ordinance 3-03-01. The words "or cat" were inserted following the word dog. As a result of the amendment, effective June 23, 1987, all cats over the age of six months in the City must be licensed and inoculated against rabies.

> Reasonable statutes and ordinances providing for license fees on dogs are constitutional as a valid exercise of the police power of the state or city.

City of Dickinson v. Thress, at 656, (citing 2 Am. Jur. pp. 719, 720). The court held that the Legislature had granted to municipalities the power to provide for the registration and licensing of all dogs kept or harbored within the city. City of Dickinson v. Thress, at 659.

As the court acknowledged in City of Dickinson v. Thress, dog licensing statutes are a constitutional exercise of the city's power. Without a doubt, municipalities may, under "police power or a general welfare clause and in some instances under specific power . . . enact . . . ordinances regulating and requiring dogs to be registered and licensed". 7 MCQUILLEN, Municipal Corporations, §24.284 (3d Ed. Rev. 1981).

IV.
CONCLUSION

The City of Bismarck has express power to license dogs. An ordinance implementing this power is clearly constitutional.

Dated this 9th day of October, 1987.

Respectfully submitted,

CITY OF BISMARCK

By: _____

HUGH P. SEAWORTH
City Attorney
221 North Fifth Street
Bismarck, ND 58502

ADDENDUM

City of Bismarck Ordinance 3-03-01 (Rev. 1986)

CHAPTER 3-03

LICENSING AND CONTROL OF DOGS AND CATS

3-03-01. License Required. It is unlawful for any person within the city to keep, maintain or have in custody or under control any dog over the age of six months which is not licensed and inoculated against rabies.

3-03-02. License Application, Fee and Renewal.

1. Any person desiring to keep, maintain or have in custody or control any dog over the age of six months shall make application to the city auditor for a license to keep the dog. The application must be in writing stating the name, sex, color and other distinguishing characteristics of the dog and the name and address of the applicant. The license must be renewed annually for so long as the dog is kept within the city by payment of the annual fee established in this section.

2. Before any license may be issued the applicant shall furnish a certificate of vaccination issued by a veterinarian licensed to practice within this state evidencing that the dog for which the license is desired has been vaccinated against rabies and that such vaccination will be good for the license year.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was on the 9th day of October, 1987, mailed to the following person:

Julie Vetter
917 Constitution
Bismarck, ND 58501

HUGH P. SEAWORTH

November 19, 1987

Ms. Julie Vetter
917 Constitution Drive
Bismarck, ND 58501

RE: City of Bismarck v. Vetter
Supreme Court No. 870223

Dear Ms. Vetter:

The Supreme Court has today entered judgment in this case wherein the judgment of the county court is affirmed under Rule 35.1(1) and (7), N.D.R.App.P.

Under the N.D.R.App.P., a petition for rehearing may be filed within fourteen days from this date, during which period the mandate of the Court will be stayed. Petitions for rehearing should conform to the provisions of Rule 40, N.D.R.App.P.

A copy of the decision of the Court is enclosed.

Sincerely yours,

Luella Dunn
Clerk
North Dakota Supreme Court

LD:mh:tb
Enclosure

cc and encl: Mr. Hugh Seaworth, City Attorney
The Honorable Gail Hagerty

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Appeal from the County Court of Burleigh County.

CITY OF BISMARCK, Plaintiff/Appellee,	)	
	)	**JUDGMENT**
vs.	)	File No. 870223
	)	
JULIE VETTER, Defendant/Appellant.	)	

This appeal having been submitted to the Court at the November, 1987, term before:

The Honorable Ralph J. Erickstad, Chief Justice; the Honorable Gerald W. VandeWalle, the Honorable H.F. Gierke III, the Honorable Herbert L. Meschke, the Honorable Beryl J. Levine, Justices;

and the Court having considered the appeal, it is ORDERED AND ADJUDGED that the judgment of the court below be and the same is hereby AFFIRMED UNDER RULE 35.1(1) and (7), NDRAppP.

Dated: November 19, 1987.

By the Court:

RALPH J. ERICKSTAD
Chief Justice
North Dakota Supreme Court

Attest: Clerk of the Supreme Court

Seal

LEVINE, Justice.

Julie Vetter appeals from a county court judgment of conviction of failure to obtain a dog license in violation of City of Bismarck ordinance 3-03-01. The issue is whether 3-03-01 is an unconstitutional "grant of title of nobility" which transforms Vetter's "naturally existing" right to own a dog into a mere privilege. Neither ordinance 3-03-01 nor the state statute, NDCC § 40-05-02(22), which authorizes municipalities to enact such statutes, is a grant of nobility.

The judgement is affirmed under North Dakota Rule of Appellate Procedure 35.1(1) and (7), City of Dickinson v. Thress, 290 N.W. 653 (N.D. 1940).

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Case No. 870223

CITY OF BISMARCK,
Plaintiff/Appellee

vs.

JULIE VETTER,
Defendant/Appellant

Petition For Rehearing
from the County Court,
County of Burleigh County,
State of North Dakota

APPELLANT'S BRIEF

Julie Vetter, in propria persona
917 Constitution Drive
Bismarck, North Dakota 58501

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STATEMENT OF THE ISSUES

1. Was Vetter prejudiced in that the complaint failed to charge an offense?

2. Is the ordinance a bill of pains and penalties?

STATEMENT OF THE CASE

The facts are: Vetter mailed a copy to the City of Bismarck of her receipt from her veterinarian that her dog was inoculated. The City mailed her note back to her. See affidavit as Exhibit A. Subsequently, the City summoned Vetter to answer the complaint, which made no reference to keeping an uninoculated dog as the forbidden offense or even as an element of the offense, nor was the complaint later amended to make inoculation an element of the offense. See Exhibit B. The trial courts subsequently ruled and adjudged that Vetter was guilty of not having a license, but no judgement was made or entered or considered that Vetter was guilty of keeping an uninoculated dog. See a copy of the Municipal Court's and County Court's Judgements, Exhibit C.

ARGUMENT

The government passes a "bill of attainder," and more specifically, a "bill of pains and penalties," when it legislatively declares one to be guilty of something, then punishes one for that guilt. Starkweather v. Blair, 71 N.W.2d 869, 878, (Mn. 1955); Gains v. Buford, 31 Ky. (1 Dana) 481, 508-511 (Ky. 1833); Green v. Shumway, 39 N.Y. 418, 422-423 (N.Y. 1868); People v. Hayes, 35 N.E. 951, 952 (N.Y. 1894); Cummings v. The State of Missouri, 71 U.S. (4 Wall) 277, 286-289, 320-325 (1866); Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 138 (1810); Norris v. Doniphan, 61 Ky. (4 Metc.) 385, 427-428 (Ky. 1863); Murphy and Glover Test Oath Cases, 41 Mo. 339, 342-347 (Mo. 1867);

Davis v. Berry, 216 F. 413, 419 (1914); Calder v. Bull, 3 U.S. (3 Dall.) 386, 388-389 (1798); In Re Yung Sing Hee, 36 F. 437, 439-440 (1888); United States v. Lovett, 328 U.S. 303, 315-318 (1946); United States v. Brown, 381 U.S. 437, 447, 458-461 (1965); Nixon v. Administrator of General Services, 433 U.S. 425, 468-469, 473-475 (1977); Benboe v. Carrol, 494 F. Supp. 462, 465-466 (1977); Crain v. City of Mountain Home, Ark., F.2d 726, 728-729 (1979); Cracchiola v. C.I.R., 643 F.2d 1383, 1385 (1981); Losier v. Sherman et al, 138 P.2d 272, 273 (Kan. 1943). One of the characteristics of a bill of pains and penalties is that it declares one to be guilty without a judicial determination of guilt. That is, it is malum prohibitum. There is no mens rea, as the legislature has declared one to be guilty even without intent. Another characteristic is that the act is preventive to prevent a future potential event or that a given group was likely to cause a future event. And another characteristic is that one must prove one's innocence to prevent one's self from being convicted, that is, one must bear witness against one's self.

Bismarck City ordinance 3-03-01 is a legislative declaration that one is guilty of keeping an unlicensed and uninoculated dog. Then it punishes one for one's legislatively determined guilt.

Thus, Bismarck City ordinance 3-03-01 is a "bill of pains and penalties" as it legislatively declares one to be guilty of maintaining or controlling an unlicensed and uninoculated dog, then punishes one for that guilt with a penal penalty.

The State of North Dakota and the City of Bismarck is forbidden to pass any "bill of pains and penalties" or "bill of attainder." North Dakota Constitution, Article I, Section 18; United States Constitution, Article I, Section 10, Clause 1: The Home Rule Charter of the City of Bismarck, Article 2.

Now, to a more traditional approach to the issue:

"The complaint is a written statement of the essential facts constituting the offense charged." Rule 3, N.D.R.Crim.P. "A complaint must state . . . the acts or omissions complained of as constituting the crime or public offense named." N.D.C.C. 29-05-01. See also the United States Constitution, Amendments Number 4 and 14.

> "... and no warrant shall issue but upon probable cause, supported by oath or affirmation, ..."
> *North Dakota Constitution, Article I, Section 8.*
> See also Rule 4(a)(2) of the N.D.R.Crim.P.

Since Rule 3, N.D.R.Crim.P., is taken from F.R.Crim.P., Rule 3, the following is applicable:

> "The complaint upon which the warrant of arrest is asked, should set forth clearly, but briefly, the substance of the offense charged, and the substantial, material features thereof." I think tested by the above decision, the complaint does not show probably cause for the arrest, and at common law, is defective... clearly, under our system of criminal jurisprudence, such a complaint would not authorize the arrest of one of our citizens ... The petitioner, therefore, must be discharged from custody."
> *Van Hoven, 28 Fed.Case 1020, 1021 (Cir. Ct., D. Minn. 1876), Case No. 16,858.*

The only essential fact can be the element of inoculation. And this element can not be ignored in the complaint or at trial nor can it be presumed by merely showing a failure to have a license. Something more must be introduced as evidence. State v. Green, 351 N.W.2d 42, 44 (Minn.App. 1984); State v. Gotsch, 184 A.2d 56, 58 (Conn. 1962).

> "It is unlawful for any person within the city to keep, maintain or have in custody or under control any dog over the age of six months which is not licensed and inoculated against rabies."
> *Bismarck City Ordinance 3-03-01.*

Not having a license per se can not be a crime, for the right of the People collectively, a/k/a police power, can only have to do with, in this context, health. Thus, the complaint must have dealt with the health issue, and not with a piece of paper. A complaint is fatally defective when its allegations are true and still

not charge an offense. It is insufficient if the offense as stated in the complaint can not enable the court, looking along to the complaint and the verdict, to impose a sentence. Hunt v. State, 11 N.W.2d 533, 535 (Neb. 1943); State v. McIntrye, 19 Minn. 93 (Gil. 65) (1872). For the court, looking at the verdict of not having a license, can not impose sentence as the court still has no knowledge and evidence if the dog was inoculated, and one can not be convicted or sentenced upon a pure, naked presumption.

The fatally defective complaint caused Vetter to believe that the ordinance was disjunctive, and not conjunctive. If inoculation had been stated as an element of the crime in the complaint, Vetter would have been able to challenge the charge at the trial level, as the dog is inoculated. See the attached affidavit of Vetter, Exhibit A. Vetter never has objected to having her dog inoculated, as Vetter believes that her neighbor, as well as herself, should not unnecessarily create the potential for health hazards to any person.

After having her note returned to her and followed by the defective complaint, Vetter could only presume that the City was only concerned with a license, and was not concerned with health, and that thus the City was trying to take away her right to own a dog. Thus, Vetter was prejudiced in that she erroneously allowed herself to be convicted, thinking this issue was strictly a constitutional question. It was only after this Supreme Court informed her that no rights were at issue in the ordinance and discovered the issue was dealing with the rights of the People collectively – health related, and not constitutional. Of course, if it is held in the future that all the City is still interested in is the license only, that is, the ordinance is disjunctive, then the constitutional question becomes the controlling issue as discussed in the first half of this brief.

Since the complaint prejudiced Vetter, the conviction must be overturned as the prejudice goes to the merits of the conviction. State v. Burch, 170 N.W.2d 543, 551 (Minn. 1960).

Nor should this case be sent back for amendment of the complaint and retrial, as the City had this evidence of health within

its knowledge all during trial, else how could they have argued the ordinance was constitutional? Nor could Vetter have assumed from the complaint that inoculation should or could be an issue in vindicating one's innocence. Giordenello v. United States, 357 U.S. 480, 488 (1958).

CONCLUSION

Wherefore, Vetter prays this Court to dismiss the complaint on the ground that the facts stated in the complaint do not constitute an offense; or hold that the ordinance is a bill of pains and penalties.

Dated this 2nd day of December 1987.

JULIE VETTER
917 Constitution Drive
Bismarck, N.D. 58501

AFIDAVIT

I, Julie Vetter, sent the rabies vaccination certificate from the veterinarian to the city of Bismarck which verified that my dog had been inoculated against rabies. The city sent it back to me in the mail with no explanation. At a later date the City of Bismarck summoned me with a criminal complaint of no dog license.

_____ _____

Date Signature

_____

Notary Public

My commission expires:
C. JOANN SPARROW
Notary Public, Burleigh Co. ND
My Commission Expires May 12, 1993

Exhibit A

December 30, 1987

Ms. Julie Vetter
917 Constitution Drive
Bismarck, ND 58501

RE: City of Bismarck v. Vetter
Supreme Court No. 870223

Dear Ms. Vetter:

The Supreme Court on December 29 entered an order denying the petition for rehearing in this case.

In accordance with Rule 41(a), NDRAppP, the mandate of the Supreme Court will be forwarded to the Clerk of the District Court after the expiration of seven days.

Sincerely yours,

Luella Dunn
Clerk
North Dakota Supreme Court

LD:je

cc: Mr. Hugh P. Seaworth
The Honorable Gail Hagerty

IN THE SUPREME COURT
UNITED STATES OF AMERICA

CITY OF BISMARCK, Appellee,	)	
	)	**NOTICE OF APPEAL**
vs.	)	Case No. 870223
	)	
JULIE VETTER, Appellant.	)	

Now comes the Appellant, in propria persona, pursuant to 28 USC, Section 1257 (2), before the United States Supreme Court to appeal the Burleigh County Court's judgement (August 3, 1987), and the North Dakota State Supreme Court's judgement (November 19, 1987), of licensure of dog, $25.00 fine and $50.00 court costs. Petition for rehearing denied on December 29, 1987.

Dated this 5th day of January, 1988.

Julie Vetter

JULIE VETTER
917 Constitution Drive
Bismarck, N.D. 58501

PROOF OF SERVICE

I do hereby declare that a true and correct copy of the above document was hand delivered to the office of:

Bismarck City Attorney
221 North 5th Street
Bismarck, N.D. 58501

Dated this 5th day of January, 1988.

Julie Vetter

JULIE VETTER

PROOF OF SERVICE

I do hereby declare that three copies of the foregoing document was hand delivered to the office of:

HUGH P. SEAWORTH
City Attorney
221 North 5th Street
Bismarck, N.D. 58501

Dated this 22nd day of March, 1988.

Julie Vetter

JULIE VETTER
In Propria Persona
917 Constitution Drive
Bismarck, North Dakota 58501